

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 1412 OF 2002
IN
FIRST APPEAL (ST) NO. 5119 OF 2001

Office Notes, Office Memoranda
of of Coram, appearances, Court's
orders and Registrar's orders : Court's or Judge's orders

Shri Y. S. Jahagirdar for Chandana
Salgaocar Radia for the applicant.

None for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 3RD DEC., 2004

P.C.:

1. This is an application for condonation of delay of 1403 days in filing the first appeal.

2. Heard Mr. Jahagirdar, learned counsel for the applicant. None appears for the respondents though duly served.

3. The application depicts as to why the delay was caused. It is submitted on behalf of the applicant that the applicant was under the impression that since one of the parties to the suit to whom the present applicant was supporting in the Trial Court had also filed the appeal before this Court and there was no necessity for this applicant to file

substantive another appeal for the purpose of challenging the very same part of the decree which had already been challenged by the present plaintiffs by way of First Appeal No. 259 of 2000. It is further asserted that the applicant was served with the notice of that appeal on 10.1.2001 and by the said notice the applicant was informed that the appeal had already been admitted and the appellant can take cross-objection and also that the matter would be reached after the period of 14 days. Thereafter, the applicant is stated to have contacted his lawyer on 15.1.2001 and took further steps in order to file the appeal. In all this process, the delay has occurred and hence it is sought to be condoned.

The learned counsel for the applicant sought to rely upon the Apex Court ruling in the case of **N. Balakrishnan v/s M. Krishnamurthy**, reported in (1998) 7 SCC 123, the ratio of which appears to be that the words "sufficient cause" should be construed liberally and acceptability of explanation for the delay would be the sole criteria and length of delay in that case would not be

relevant. In the present case before us, it is clear from the contents of the application that the applicant was under bonafide belief that he did not file the appeal and after he received the notice he took the necessary steps.

In view of this position, I am of the view that the delay is sufficiently explained by the applicant and, therefore, the application deserves to be allowed.

Hence, the application is allowed in terms of prayer clause (a) on condition that the cost of Rs.1000/- should be paid, out of which Rs.500/- shall be donated to the Kirtikar Library within one week and remaining amount of cost shall be paid to the respondents.

Application stands disposed of.

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